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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:

Gainesville Livestock Market, Inc.
and Milton Ward,

Respondents

P. & S. Docket No. D-07-0057

Decision Without Hearing by
Reason of Consent

This proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.) (hereinafter referred to as the "Act"), by a complaint filed by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that Respondents willfully violated the Act and the regulations promulgated thereunder. This decision is entered pursuant to the consent decision provisions of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes applicable to this proceeding (7 C.F.R. § 1.138).

Respondents admit the jurisdictional allegations in paragraph I of the complaint and specifically admit that the Secretary has jurisdiction in this matter, neither admit nor deny the remaining allegations, waive oral hearing and further procedure, and consent and agree, for the purpose of settling this proceeding and for such purpose only, to the entry of this decision.

Complainant agrees to the entry of this decision.

Findings of Fact

1. Gainesville Livestock Market, Inc. (hereinafter, "the Corporate Respondent"), is a corporation whose business mailing address is P.O. Box 1055, 1920 Refinery Road, Gainesville, Texas 76240.

2. The Corporate Respondent was at all times material herein:

(a) A posted stockyard subject to the provisions of the Act;

(b) Engaged in the business of a market agency, selling livestock on a commission basis; and

(c) Registered with the Secretary of Agriculture as a market agency, to sell livestock on a commission basis.

3. Milton Ward (hereinafter, "the Individual Respondent"), is an individual whose business mailing address is P.O. Box 1055, 1920 Refinery Road, Gainesville, Texas 76240.

4. The Individual Respondent was, at all times material herein:

- (a) President and owner of 100% of the stock of the Corporate Respondent;
and
(b) Responsible for the direction, management and control of the Corporate Respondent.

Conclusions

Respondents having admitted the jurisdictional facts and the parties having agreed to the entry of this decision, such decision will be entered.

Order

The Corporate Respondent, Gainesville Livestock Market, Inc., its agents and employees, directly or through any corporate or other device, in connection with its activities subject to the Act, and the Individual Respondent, Milton Ward, shall cease and desist from:

1. Failing to maintain and use properly the Corporate Respondent's Custodial Account for Shippers' Proceeds; and
2. Using funds received as proceeds from the sale of livestock sold on a commission basis for Respondents' own purposes or for any purpose other than the payment of lawful marketing charges and the remittance of net proceeds to the consignors and shippers of livestock.

Respondents shall keep accounts, records and memoranda which fully and correctly disclose all transactions conducted subject to the Act, including, but not limited to, documents supporting their accounts receivables, copies of all of their canceled checks, and an accurate list of their outstanding checks.

Pursuant to section 312(b) of the Act (7 U.S.C. § 213(b)), Respondents are, jointly and severally, assessed a civil penalty in the amount of \$48,500.00. However, the \$48,500.00 civil penalty will be held in abeyance for two years from the date of this order under the following conditions:

1. Within 45 days from the date of this order, the assets of the Corporate Respondent will be sold to The New Gainesville Livestock Auction, LLC, whose President is James Peyrot, Jr., and the sale excludes all fiduciary accounts of the Corporate Respondent, including its Custodial Account for Shippers' Proceeds. Complainant will provide notice to this tribunal if such sale does not occur within the 45-day period. Respondents, after consulting with counsel, intentionally and expressly waive any right to contest such notice; and
2. Respondents, directly or through any corporate or other device, do not engage in business subject to the jurisdiction of the Act within two years from the date of this order. Proof that Respondents have engaged in business subject to the Act will consist of documentary evidence submitted to this tribunal by Complainant. Respondents, after consulting with counsel, intentionally and expressly waive any right to contest such evidence.

The \$48,500.00 civil penalty will become due and payable immediately if, within 45 days from the date of this order, the assets of the Corporate Respondent are not sold to The New Gainesville Livestock Auction, LLC, as indicated by notice filed by Complainant pursuant to paragraph 1. above, or Respondents are determined to have engaged in business subject to the

08/09/2007 11:59 9406686056

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PAGE 01/01
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08/09/2007 10:03 FAX

jurisdiction of the Act at any time within two years from the date of this order, as indicated by documentary evidence submitted by Complainant pursuant to paragraph 2 above.

If the sale takes place as described in paragraph 1 above and Respondents are not determined to have engaged in business subject to the Act within two years from the date of this order as described in paragraph 2 above, the \$48,500.00 civil penalty will abate at the expiration of two years from the date of this order.

The provisions of this order shall become effective on the sixth day after service of this order on Respondents.

Copies of this decision shall be served upon the parties.

Issued this 14th day of

August 2007.

VWP
Administrative Law Judge

for Gainesville Livestock Market, Inc.

Milton Ward Respondents

Ernest H. Van Hooser, Esq.
Attorney for Respondents

Andrew Y. Stanton, Esq.
Attorney for Complainant